

Duplicate #1 7-2-04

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/021,656
	Filing Date	12/12/2001
	First Named Inventor	GARY C. JOHNSON
	Art Unit	3681
	Examiner Name	Dirk Wright
Total Number of Pages in This Submission	Attorney Docket Number	

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ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input checked="" type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) Remarks AMENDMENTS, REQUESTS 1-7, REMARKS 2 PAGES, ATTACHMENTS AND FORMS 1-10. Amendment to claims (3-pages). Amendment to "Description of invention" (5-pages). Amendment to drawing (2-duplicates).[R.18;11]	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input checked="" type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT		
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CERTIFICATE OF TRANSMISSION/MAILING	
I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.	
Typed or printed name	GARY C. JOHNSON
Signature	
Date	7-02-04

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Paper No.

Notice of Non-Compliant Amendment (37 CFR 1.121)

The amendment document filed on 7/31/03 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121, as amended on June 30, 2003 (see 68 Fed. Reg. 38611, Jun. 30, 2003). In order for the amendment document to be compliant, correction of the following item(s) is required. Only the corrected section of the non-compliant amendment document must be resubmitted (in its entirety), e.g., the entire "Amendments to the claims" section of applicant's amendment document must be re-submitted. 37 CFR 1.121(h).

THE FOLLOWING CHECKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
- ☒ A. Amended paragraph(s) do not include markings OR SPECIFIC LOCATION TO ADD NEW SECTION.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☒ C. Other Detailed Description of the Drawings AMENDMENT REQUIRED - SHOULD BE DONE BY DELETION OR REPLACEMENT OF PARAGRAPHS.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____
- ☒ 3. Amendments to the drawings: No Red markings on Drawings
- ☒ 4. Amendments to the claims:
- ☒ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all claims (including withdrawn claims).
 - ☒ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified.
 - ☒ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See web site below

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP Sec. 714 and the USPTO website at <http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/officeflyer.pdf>.

If the non-compliant amendment is a **PRELIMINARY AMENDMENT**, applicant is given **ONE MONTH** from the mail date of this letter to supply the corrected section which complies with 37 CFR 1.121. Failure to comply with 37 CFR 1.121 will result in non-entry of the preliminary amendment and examination on the merits will commence without consideration of the proposed changes in the preliminary amendment(s). This notice is not an action under 35 U.S.C. 132, and this **ONE MONTH** time limit is **not extendable**.

If the non-compliant amendment is a reply to a **NON-FINAL OFFICE ACTION** (including a submission for an RCE), and since the amendment appears to be a *bona fide* attempt to be a reply (37 CFR 1.135(c)), applicant is given a **TIME PERIOD** of **ONE MONTH** from the mailing of this notice within which to re-submit the corrected section which complies with 37 CFR 1.121 in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD ARE AVAILABLE UNDER 37 CFR 1.136(a).**

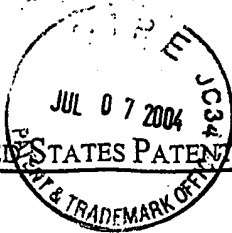
If the amendment is a reply to a **FINAL REJECTION**, this form may be an attachment to an Advisory Action. The period for response to a final rejection continues to run from the date set in the final rejection, and is not affected by the non-compliant status of the amendment.

Deborah Neal
Legal Instruments Examiner (LIE)

703-305-7812
Telephone No.

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,656	12/12/2001	Gary Carlton Johnson		4604

7590
Gary C Johnson
2064 Lafayette
Detroit, MI 48207

06/10/2004

EXAMINER

WRIGHT, DIRK

ART UNIT	PAPER NUMBER
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3681

17

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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D-28
DETROIT, MICHIGAN
During the annual International Freedom Festival, 500,000 people on both sides of the Detroit River witness this spectacular fireworks display. Detroit and its Canadian neighbor, Windsor, combine to celebrate their freedom during the week-long festivities.
Photo Credit: © Dennis Cox



(DUPLICATE PACKAGE #-1)
REQUESTS 1-7

DESCRIPTION OF INVENTION
SUBSTITUTE CLAIMS (7 and 8)
CORRECTED/AMENDED DRAWING
REMARKS (2 pages)
ATTACHMENTS AND FORMS (1-10)

POST CARD

Gary C. Johnson
2064 Lafayette
Det. MI 48207

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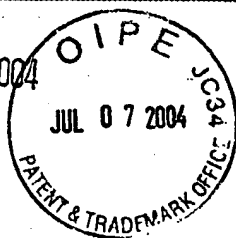
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Rec. May 20th, 2004

MAY 14 2004



Gary Johnson
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TC 3600

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P.O. Box 1450
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In re Application of
Gary Johnson
Serial No: 10/021,656
Filed: December 12, 2001
For: JOHNSON-POSITIVE ACTION CONTINUOUS
TRACTION (P.A.C.T.) VEHICLE DIFFERENTIAL

: DECISION ON PETITION
: UNDER 37 CFR 1.181

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This is a decision on the Petitions under 37 CFR 1.181 filed April 1 and 5, 2004 for Supervisory Review of the final rejection mailed October 16, 2003.

The petition is **GRANTED** to the extent indicated below.

A review of the application file history reveals that a first Office action was mailed January 10, 2003 in which the examiner rejected claims 1-3 under 35 U.S.C. 112 and 35 U.S.C. 102. An amendment was received on February 25, 2003 in response to the Office action mailed January 10, 2003, which canceled claims 1-3 and added claims 4-6. Another Office action was mailed May 5, 2003 objecting to the drawings and rejecting claims 4-6 under 35 U.S.C. 112. A handwritten amendment was received July 31, 2003 in response to the May 5, 2003 Office action, which amended the drawings, added a new section to the specification, canceled claims 4-6 and added claims 7-8. A final rejection was mailed October 16, 2003 that: refused entry of the amended drawing based on new matter; refused entry of the changes to the specification as not complying with 37 CFR 1.125 because a statement was not included that the new specification did not include new matter and a marked up copy of the new specification was not included; refused entry of the amendment to the claims canceling claims 4-6 and adding claims 7-8 because the handwritten text was not double spaced and was hard to read; and again rejecting claims 4-6 under 35 U.S.C. 112. A Notice of Appeal was filed December 11, 2003 and an improper Appeal Brief was filed December 30, 2003. An amendment was received March 16, 2004 amending the drawings, adding a new section to the specification, providing a statement that the new section of the specification does not include new matter, canceling claims 4-6 and adding claims 7-8. An amendment was received April 12, 2004 which appears to be a duplicate of the March 16, 2004 amendment.

With regard to the October 16, 2003 final rejection, the examiner acted properly in refusing entry of the amendments to the drawings until the question of new matter is settled. See MPEP 714.19. The examiner erred in refusing to enter the added section (paragraphs) to the specification. The section applicant wishes added is not a substitute specification. Therefore the amendment to the specification does not fall under 37 CFR 1.125 and does not require a marked

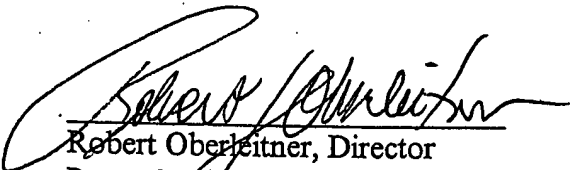
up copy. It should fall under 37 CFR 1.121(b)(1). The examiner also erred in his handling of the July 31, 2003 amendment to the claims by refusing entry of the amendment to the claims, acting on the previously presented claims 4-6 and making his action final. Again, the amendment to the claims must also comply with 37 CFR 1.121(c). See MPEP 714.


The amendments to the specification and claims filed July 31, 2003 should have been refused entry on the basis of their being non-compliant with 37 CFR 1.121. No instruction was provided which unambiguously identifies the location to add the new section. Also, the request to delete the sentence from the "Detailed Description of the Drawing" is improper and should be done by deletion and replacement of the paragraph. See 37 CFR 1.121(b)(1). An amendment to the claims must include a complete listing of all claims in the application and the status of each claim indicated in a parenthetical expression after each claim number. See MPEP 714, III, 3. A Notice of Non-Compliant Amendment should have been sent to applicant setting a time limit of one month for reply during which time applicant would have the opportunity to correct the problems with his amendment under 37 CFR 1.121.

By the examiner not having a Notice of Non-compliant Amendment sent to applicant and directing the final Office action to claims 4-6, the final rejection mailed October 16, 2003 was improper. Therefore the October 16, 2003 final rejection is hereby vacated. Since the final rejection was improper, applicant should not have been forced to file a Notice of Appeal and its required fee. Therefore, the fee for the Notice of Appeal will be refunded to applicant.

This file will be forwarded to the Supervisory Legal Instruments Examiner to vacate the final rejection of October 16, 2003, refund the fee for the Notice of Appeal and provide applicant with a Notice of Non-compliant Amendment for the amendments applicant has filed July 31, 2003, March 18, 2004.

SUMMARY: The petition is **GRANTED** to the extent indicated.


Robert Oberleitner, Director
Patent Technology Center 3600
(703) 308-1134


pp:cm:5/13/04